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EXAMINER

PILLAI, NAMITHA

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/981,320	<b>Applicant(s)</b> ABBOTT ET AL.	
	<b>Examiner</b> NAMITHA PILLAI	<b>Art Unit</b> 2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-10,13-21,24,27,31,32,44,46,57,59,60,62,65 and 71-79 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-10,13-21,24,27,31,32,44,46,57,59,60,62,65 and 71-79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/17/09</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

1. The Examiner acknowledges Applicant's submission on 9/2/09 including amendments to claims 1, 20, 24, 27, 44, 62, 65 and the addition of new claims 78 and 79. All pending claims have been rejected.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 6-10, 13-21, 24, 26, 27, 31-39, 44, 46, 57, 59, 60, 62, 65, 71-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over U. S. Patent No. 5, 740, 037 (McCann et al.), herein referred to as McCann, U. S. Patent No. 5,555,376 (Theimer et al.), herein referred to as Theimer and U. S. Patent No. 5, 689, 619 (Smyth).

Referring to claim 1, McCann discloses a computer-implemented method for dynamically determining an appropriate user interface of a plurality of pre-defined user interfaces to be presented to a user of a computing device for presenting of information associated with a task (column 2, lines 32-34). McCann discloses employing a processor to execute computer executable instructions stored on a computer readable medium to perform the following acts (Figure 1). McCann discloses determining cognitive availability of a user, the cognitive availability is a function of an amount of

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attention the user uses during a computer assisted task (column 2, lines 32-42).

McCann discloses determining context of the user and automatically selecting for presentation to the user one of the predefined user interfaces, wherein the selection is a function of the determined cognitive availability of the user and the user context (column 2, lines 32-42). The context of the user is represented by a plurality of context attributes that each model an aspect of the context (column 2, lines 31-36). McCann discloses presenting to the user information associated with the task, presenting the user the selected predefined interface (column 2, lines 38-42). McCann does not clearly disclose that the automatically selecting is done without user intervention. Theimer discloses that a user interface is automatically selected without user intervention (column 13, lines 29-45). It would have been obvious to one skilled in the art at the time of the invention to learn from Theimer automatically selecting is done without user intervention. The user accessing the user interface in McCann is faced with various distractions while in combat. Providing an automatic selection means that minimizes user intervention would be beneficial to the user to concentrate on their surroundings. This provides motivation for McCann to learn from Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Theimer automatically selecting is done without user intervention.

McCann and Theimer do not disclose dynamically selecting based on determination of a quantity of information the user has cognitive availability to receive in a background mode. Smyth discloses dynamically selecting comprising determining a quantity of information the user has cognitive ability to receive in a background mode.

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Smyth discloses selecting a user interface including an amount of background information that is less than the user has the availability to receive. See column 4, lines 41-61. It would have been obvious to one skilled in the art at the time of the invention to learn from Smyth dynamically selecting based on determination of a quantity of information the user has cognitive availability to receive in a background mode. Smyth discloses providing more user interface options for a user operating a user interface under military operations. These options can be used to provide the user with a better experience for the system used in McCann and Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Smyth based on determination of a quantity of information the user has cognitive availability to receive in a background mode.

Referring to claim 3, McCann discloses that the computing device is a wearable personal computer (Figure 7).

Referring to claim 6, McCann discloses that the selecting is performed at execution time (column 2, lines 37-41).

Referring to claim 7, McCann discloses that the determining and the selecting are dynamically performed repeatedly so that the user interface that is presented to the user is appropriate to current needs (column 2, lines 32-53).

Referring to claim 8, McCann discloses that the dynamic determining and the selecting are performed repeatedly so that the user interface that is presented to the user is optimal with respect to the current needs (column 2, lines 32-53).

Referring to claim 9, McCann discloses that the determining of the current needs includes at least one of characterizing user interface ("UI") needs corresponding to a current task being performed, characterizing UI needs corresponding to a current situation of the user, or characterizing UI needs corresponding to current I/O devices that are available (column 2, lines 32-53).

Referring to claim 10, McCann discloses that the determining of the current needs includes characterizing user interface ("UI") needs corresponding to a current task being performed, characterizing UI needs corresponding to a current situation of the user, and characterizing UI needs corresponding to current I/O devices that are available (column 2, lines 32-53).

Referring to claim 13, McCann discloses that the selected user interface includes information to be presented to the user and interaction controls that can be manipulated by the user (column 2, lines 18-22).

Referring to claim 14, McCann discloses monitoring the user in order to produce information about the current context, or monitoring a surrounding environment of the user in order to produce information about the current context, or monitoring the user and the surrounding environment of the user in order to produce information about the current context (column 2, lines 32-53).

Referring to claim 15, McCann discloses that the current needs are determined based at least in part on the current context (column 2, lines 31-37).

Referring to claim 16, McCann discloses customizing the selected user interface based on the user before presenting of the customized user interface to the user (column 2, lines 43-48).

Referring to claim 17, McCann discloses adapting the selected user interface to a type of the computing device before presenting of the adapted user interface to the user (column 2, lines 15-20).

Referring to claim 18, McCann discloses adapting the selected user interface to a current activity of the user before presenting of the adapted user interface to the user (column 2, lines 32-37).

Referring to claim 19, McCann discloses determining of the current needs is based at least in part on the user being mobile (column 2, lines 32-43).

Referring to claim 20, McCann discloses a computer-readable medium having stored thereon computer executable instructions for carrying out the following acts (column 2, lines 11-16). McCann discloses dynamically determining cognitive availability of a user, the cognitive availability is a function of an amount of attention the user uses during a computer-assisted task (column 2, lines 32-45). McCann discloses that the cognitive availability comprising at least one of an expertise of the user, an ability to extend short term memory or distractions associated with the user (column 2, lines 43-48). McCann discloses dynamically determining one or more current needs for a user interface to be presented to the user (column 2, lines 38-41). McCann discloses selecting for presentation to the user one of a plurality of predefined user interfaces whose characterized properties correspond to the dynamically determined cognitive

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availability of the user and current needs and presenting the selected user interface to the user (column 2, lines 32-53). McCann does not clearly disclose that the selecting is done without user intervention. Theimer discloses that a user interface is selected without user intervention (column 13, lines 29-45). It would have been obvious to one skilled in the art at the time of the invention to learn from Theimer selecting is done without user intervention. The user accessing the user interface in McCann is faced with various distractions while in combat. Providing a selection means that minimizes user intervention would be beneficial to the user to concentrate on their surroundings. This provides motivation for McCann to learn from Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Theimer selecting is done without user intervention.

McCann and Theimer do not disclose dynamically selecting based on determination of a quantity of information the user has cognitive availability to receive in a background mode. Smyth discloses dynamically selecting comprising determining a quantity of information the user has cognitive ability to receive in a background mode. Smyth discloses selecting a user interface including an amount of background information that is less than the user has the availability to receive. See column 4, lines 41-61. It would have been obvious to one skilled in the art at the time of the invention to learn from Smyth dynamically selecting based on determination of a quantity of information the user has cognitive availability to receive in a background mode. Smyth discloses providing more user interface options for a user operating a user interface under military operations. These options can be used to provide the user with a better



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experience for the system used in McCann and Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Smyth based on determination of a quantity of information the user has cognitive availability to receive in a background mode.

Referring to claim 21, McCann discloses that the computer-readable medium is a memory of a computing device (column 2, lines 11-16).

Referring to claim 24, McCann discloses a computing device for dynamically determining an appropriate user interface to be presented to a user of a computing device (column 2, lines 32-34). McCann discloses a processor, a memory communicatively coupled to the processor, the memory having stored therein computer-executable instructions configured to dynamically determine an appropriate user interface (Figure 1). McCann discloses a first component capable of, for each of multiple defined user interfaces, characterizing properties of the defined user interface (column 2, lines 38-53). McCann discloses a second component capable of determining during execution one or more current needs for a user interface to be presented to the user, wherein the determining includes determining cognitive load of the user (column 2, lines 38-42). McCann discloses that the cognitive loads include a cognitive availability of the user that is a function of an amount of time the user has between tasks (column 2, lines 43-48). McCann discloses a third component capable of selecting during execution one of the defined user interfaces whose characterized properties correspond to the dynamically determined current needs, the selected user interface for presentation to the user (column 2, lines 32-42). McCann does not clearly

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disclose that the selecting is done without user intervention. Theimer discloses that a user interface is selected without user intervention (column 13, lines 29-45). It would have been obvious to one skilled in the art at the time of the invention to learn from Theimer selecting is done without user intervention. The user accessing the user interface in McCann is faced with various distractions while in combat. Providing a selection means that minimizes user intervention would be beneficial to the user to concentrate on their surroundings. This provides motivation for McCann to learn from Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Theimer selecting is done without user intervention.

McCann and Theimer do not disclose that the complexity of the selected interface being based on amount of time determined by the second component. Smyth discloses that the complexity of the selected interface being based on the amount of time determined by the second component that the user has between focus tasks. See column 4, lines 41-61. It would have been obvious to one skilled in the art at the time of the invention to learn from Smyth that the complexity of the selected interface being based on amount of time determined by the second component. Smyth discloses providing more user interface options for a user operating a user interface under military operations. These options can be used to provide the user with a better experience for the system used in McCann and Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Smyth that the complexity of the selected interface being based on amount of time determined by the second component.

Referring to claim 26, McCann discloses a computer system for dynamically determining an appropriate user interface to be presented to a user of a computing device (column 2, lines 32-34). McCann discloses means for, for each of multiple defined user interfaces, characterizing properties of the defined user interface (column 2, lines 38-53). McCann discloses a processor, a memory communicatively coupled to the processor, the memory having stored therein computer-executable instructions configured to dynamically determine an appropriate user interface (Figure 1). McCann discloses means for determining during execution one or more current needs for a user interface to be presented to the user, wherein the determining includes determining cognitive availability of the user, the cognitive availability is a function of an amount of attention the user uses during a computer-assisted task (column 2, lines 32-53). McCann discloses means for selecting during execution one of the defined user interfaces whose characterized properties correspond to the dynamically determined current needs, the selected user interface for presentation to the user (column 2, lines 32-53). McCann does not clearly disclose that the selecting is done without user intervention. Theimer discloses that a user interface is selected without user intervention (column 13, lines 29-45). It would have been obvious to one skilled in the art at the time of the invention to learn from Theimer selecting is done without user intervention. The user accessing the user interface in McCann is faced with various distractions while in combat. Providing a selection means that minimizes user intervention would be beneficial to the user to concentrate on their surroundings. This provides motivation for McCann to learn from Theimer. Therefore one skilled in the art

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at the time of the invention would have been motivated to learn from Theimer selecting is done without user intervention.

Referring to claim 27, McCann discloses a method for dynamically determining an appropriate user interface to be presented to a user of a computing device based on a current context (column 2, lines 32-34). McCann discloses determining multiple user interface elements that are available for presentation on the computing device (column 2, lines 32-37). McCann discloses employing a processor executing computer executable instructions stored on a computer readable storage medium to implement the features claimed below (Figure 1). McCann discloses characterizing properties of the determined user interface elements, dynamically determining cognitive availability of the user, the cognitive availability is a function of an amount of attention the user uses during a computer-assisted task (column 2, lines 38-48). McCann discloses dynamically determining one or more current needs for a user interface to be presented to the user (column 2, lines 32-34). McCann discloses generating a first user interface for, the first user interface having user interface elements whose characterized properties correspond to the dynamically determined current needs and cognitive availability of the user (column 2, lines 32-52). McCann discloses presenting the first user interface to the user (column 2, lines 38-43). McCann discloses presenting the second user interface to the user (column 2, lines 43-48). McCann discloses monitoring the user in order to produce information about the current cognitive ability of the user, repeating the dynamically determining cognitive availability of the user cognitive availability is a function of an amount of attention the user uses during a computer

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assisted task, repeating the dynamically determining one or more current needs for a user interface to be presented to the user, generating a second user interface, the second user interface having user interface elements whose characterized properties correspond to the dynamically determined current needs and cognitive availability of the user (column 2, lines 30-60). McCann does not clearly disclose that the determining is done without user intervention. Theimer discloses that a user interface is selected in response to determining cognitive availability and current needs without user intervention (column 13, lines 29-45). It would have been obvious to one skilled in the art at the time of the invention to learn from Theimer that a user interface is selected in response to determining cognitive availability and current needs without user intervention. The user accessing the user interface in McCann is faced with various distractions while in combat. Providing a selection means that minimizes user intervention would be beneficial to the user to concentrate on their surroundings. This provides motivation for McCann to learn from Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Theimer a user interface is selected in response to determining cognitive availability and current needs without user intervention.

McCann and Theimer do not an indication of a number of types of background feedback for which the user has available attention. Smyth discloses an indication of a number of types of background feedback for which the user has available attention. Smyth discloses a user interface that combines a plurality of user interface elements determined to be available for presentation on the computing device. See column 4,

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lines 41-61. It would have been obvious to one skilled in the art at the time of the invention to learn from Smyth an indication of a number of types of background feedback for which the user has available attention. Smyth discloses providing more user interface options for a user operating a user interface under military operations. These options can be used to provide the user with a better experience for the system used in McCann and Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Smyth an indication of a number of types of background feedback for which the user has available attention.

Referring to claim 31, McCann discloses retrieving one or more definitions for combining available user interface elements in an appropriate manner so as to satisfy current needs, and wherein the generating of the user interface uses at least one of the retrieved definitions to combine the user interface elements of the generated user interface in a manner that is appropriate to the determined current needs (column 2, lines 32-37).

Referring to claim 32, McCann discloses retrieving one or more definitions for adapting available user interface elements to a type of computing device, and wherein the generating of the user interface uses at least one of the retrieved definitions to combine the user interface elements of the generated user interface in a manner specific to the type of the computing device (column 2, lines 32-37).

Referring to claim 33, McCann discloses a method for dynamically presenting an appropriate user interface to a user of a computing device based on a current context (column 2, lines 32-34). McCann discloses presenting a first user interface to the user

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without user intervention, determining that the current context has changed in such a manner that the first user interface is not appropriate for the user (column 2, lines 38-48). McCann discloses that the changed context including at least one of a change in a current location of the user, a change in a current mental state of the user, or a change in one or more devices currently available to the user (column 2, lines 38-48). McCann discloses selecting a second user interface that is appropriate for the user based at least in part on the current context and a current cognitive availability of the user, the current cognitive availability is a function of an amount of attention the user uses during a computer-assisted task and presenting the second user interface to the user (column 2, lines 38-48).

Referring to claim 34, McCann discloses determining that the current context has changed in such a manner that the first user interface is not appropriate for the user includes automatically detecting the changes (column 2, lines 32-34).

Referring to claim 35, McCann discloses selecting of the second user interface is performed without user intervention (column 2, lines 43-48).

Referring to claim 36, McCann discloses that the second user interface is one of multiple predefined user interfaces (column 2, lines 38-53).

Referring to claim 37, McCann discloses that the second user interface is dynamically generated after the determining of the changes in the current context (column 2, lines 43-48).

Referring to claim 38, McCann discloses that the second user interface is a modification of the first user interface (column 2, lines 43-48).

Referring to claim 39, McCann discloses modifying of the first user interface ("UI") includes modifying prominence of one or more UI elements of the first user interface, modifying associations between the UI elements, modifying a metaphor associated with the first user interface, modifying a sensory analogy associated with the first user interface, modifying a degree of background awareness associated with the first user interface, modifying a degree of invitation associated with the first user interface, and/or modifying a degree of safety of the user based on one or more indications presented as part of the second user interface that were not part of the first user interface (column 2, lines 43-48).

Referring to claim 44, McCann discloses a method for dynamically determining requirements for a user interface that is currently appropriate to be presented to a user of a computing device based on a current context (column 2, lines 32-34). McCann discloses dynamically determining at least one value representative of one or more current characteristics of a user interface that is currently appropriate to be presented to the user, the determining based at least in part on the current context (column 2, lines 38-40). McCann discloses dynamically determining at least one value representative of cognitive availability of the user, the cognitive availability is a function of an amount of attention the user uses during a computer-assisted task (column 2, lines 43-45). McCann discloses identifying at least some of the determined characteristics as requirements for a user interface that is currently appropriate to be presented to the user (column 2, lines 38-42). McCann discloses determining a user interface that satisfies the determined requirements and presenting the determined user interface to



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the user (column 2, lines 32-38). McCann does not clearly disclose that the dynamically determining is done without user intervention. Theimer discloses that a user interface is selected in response to dynamically determining current characteristics that is currently appropriate without user intervention (column 13, lines 29-45). It would have been obvious to one skilled in the art at the time of the invention to learn from Theimer dynamically determining is done without user intervention. The user accessing the user interface in McCann is faced with various distractions while in combat. Providing a selection means that minimizes user intervention would be beneficial to the user to concentrate on their surroundings. This provides motivation for McCann to learn from Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Theimer dynamically determining is done without user intervention.

McCann and Theimer does not disclose that based on a comparison of at least one value of representative of current characteristics of a user interface and at least one value representative of cognitive availability of the user presenting the user interface. Smyth discloses that based on a comparison of at least one value of representative of current characteristics of a user interface and at least one value representative of cognitive availability of the user presenting the user interface. See column 4, lines 41-61. It would have been obvious to one skilled in the art at the time of the invention to learn from Smyth that based on a comparison of at least one value of representative of current characteristics of a user interface and at least one value representative of cognitive availability of the user presenting the user interface. Smyth discloses providing

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more user interface options for a user operating a user interface under military operations. These options can be used to provide the user with a better experience for the system used in McCann and Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Smyth that based on a comparison of at least one value of representative of current characteristics of a user interface and at least one value representative of cognitive availability of the user presenting the user interface.

Referring to claim 46, McCann discloses determining of the current characteristics includes determining characteristics corresponding to a current task being performed, determining characteristics corresponding to a current situation of the user, and/or determining characteristics corresponding to current I/O devices that are available (column 2, lines 32-37).

Referring to claim 57, McCann discloses a method for dynamically determining characteristics of a user interface that is currently appropriate to be presented to a user of a computing device (column 2, lines 11-24). McCann discloses dynamically determining a level of attention which the user can currently give to the user interface based in part on the cognitive availability of the user, the cognitive availability is a function of an amount of attention the user uses during a computer-assisted task (column 2, lines 32-45), where based on the attention that the soldier can give the user interface, an appropriate user interface is provided. McCann discloses dynamically determining one or more current characteristics of a user interface that is currently appropriate to be presented to the user based at least in part on the determined level of

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attention (column 2, lines 32-42). McCann discloses presenting the determined user interface to the user (column 2, lines 32-38). McCann does not clearly disclose that the determining the user interface is done without user intervention. Theimer discloses that a user interface is selected in response to determining current characteristics that is currently appropriate without user intervention (column 13, lines 29-45). It would have been obvious to one skilled in the art at the time of the invention to learn from Theimer determining is done without user intervention. The user accessing the user interface in McCann is faced with various distractions while in combat. Providing a selection means that minimizes user intervention would be beneficial to the user to concentrate on their surroundings. This provides motivation for McCann to learn from Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Theimer determining the user interface is done without user intervention.

McCann and Theimer does not disclose that cognitive availability is based on the user's background awareness, task switched attention and parallel attention. Smyth discloses that cognitive availability is based on the user's background awareness, task switched attention and parallel attention. See column 4, lines 41-61. It would have been obvious to one skilled in the art at the time of the invention to learn from Smyth that cognitive availability is based on the user's background awareness, task switched attention and parallel attention. Smyth discloses providing more user interface options for a user operating a user interface under military operations. These options can be used to provide the user with a better experience for the system used in McCann and Theimer. Therefore one skilled in the art at the time of the invention would have been

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motivated to learn from Smyth that cognitive availability is based on the user's background awareness, task switched attention and parallel attention.

Referring to claim 59, McCann discloses the determined level of attention is based on a determined current cognitive load of the user (column 2, lines 32-42).

Referring to claim 60, McCann discloses the determining of the current characteristics is performed without user intervention (column 2, lines 32-42).

Referring to claim 62, McCann discloses a method for dynamically determining an appropriate user interface to be presented to a user of a computing device (column 2, lines 15-20). McCann discloses retrieving one or more definitions for dynamically combining available user interface elements in an appropriate manner so as to satisfy current needs (column 2, lines 38-43). McCann discloses dynamically determining cognitive load of the user, the cognitive load includes a cognitive availability of the user that is a function of an amount of attention the user uses during a computer-assisted task (column 2, lines 43-48). McCann discloses selecting one of the retrieved definitions based on current conditions, and the determined cognitive load of the user (column 2, lines 38-43). McCann discloses generating a user interface that is appropriate to be presented to the user using the selected definition and presenting the user interface to the user (column 2, lines 32-39). McCann does not clearly disclose that the selecting is done without user intervention. Theimer discloses that a user interface is selected without user intervention (column 13, lines 29-45). It would have been obvious to one skilled in the art at the time of the invention to learn from Theimer selecting is done without user intervention. The user accessing the user interface in

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McCann is faced with various distractions while in combat. Providing a selection means that minimizes user intervention would be beneficial to the user to concentrate on their surroundings. This provides motivation for McCann to learn from Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Theimer selecting is done without user intervention.

McCann and Theimer does not disclose that cognitive availability is based on the user's background awareness and selecting a retrieved definition having a background elements based on the determined background awareness of the user. Smyth discloses that cognitive availability is based on the user's background awareness and selecting a retrieved definition having a background elements based on the determined background awareness of the user. See column 4, lines 41-61. It would have been obvious to one skilled in the art at the time of the invention to learn from Smyth that cognitive availability is based on the user's background awareness and selecting a retrieved definition having a background elements based on the determined background awareness of the user. Smyth discloses providing more user interface options for a user operating a user interface under military operations. These options can be used to provide the user with a better experience for the system used in McCann and Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Smyth that cognitive availability is based on the user's background awareness and selecting a retrieved definition having a background elements based on the determined background awareness of the user.

Referring to claim 65, McCann discloses a method for dynamically determining an appropriate user interface to be presented to a user of a computing device (column 2, lines 32-34). McCann discloses retrieving one or more definitions for dynamically adapting available user interface elements to a type of computing device (column 2, lines 16-22). McCann discloses dynamically determining cognitive availability of the user the cognitive availability is a function of an amount of attention the user uses during a computer-assisted task (column 2, lines 32-48). McCann discloses selecting one of the retrieved definitions based on current conditions, and the determined cognitive availability of the user (column 2, lines 32-48). McCann discloses generating a user interface using the selected definition and presenting the user interface to the user (column 2, lines 32-38). McCann does not clearly disclose that the selecting is done without user intervention. Theimer discloses that a user interface is selected without user intervention (column 13, lines 29-45). It would have been obvious to one skilled in the art at the time of the invention to learn from Theimer selecting is done without user intervention. The user accessing the user interface in McCann is faced with various distractions while in combat. Providing a selection means that minimizes user intervention would be beneficial to the user to concentrate on their surroundings. This provides motivation for McCann to learn from Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Theimer selecting is done without user intervention.

McCann and Theimer does not disclose that cognitive availability is based on at least the task switched attention of the user and selecting a retrieved definition based

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on the task switched attention of the user. Smyth discloses that cognitive availability is based on at least the task switched attention of the user and selecting a retrieved definition based on the task switched attention of the user. See column 4, lines 41-61. It would have been obvious to one skilled in the art at the time of the invention to learn from Smyth that cognitive availability is based on at least the task switched attention of the user and selecting a retrieved definition based on the task switched attention of the user. Smyth discloses providing more user interface options for a user operating a user interface under military operations. These options can be used to provide the user with a better experience for the system used in McCann and Theimer. Therefore one skilled in the art at the time of the invention would have been motivated to learn from Smyth that cognitive availability is based on at least the task switched attention of the user and selecting a retrieved definition based on the task switched attention of the user.

Referring to claim 71, McCann discloses cognitive availability comprises the user's precognitive state is unavailable (column 2, lines 32-34).

Referring to claim 72, McCann discloses cognitive availability comprises the user has enough background awareness available to receive one or more types of feedback or status (column 2, lines 22-24).

Referring to claim 73, McCann discloses cognitive load comprises cognitive demand (column 2, lines 43-45).

Referring to claim 74, McCann discloses cognitive load comprises cognitive availability (column 2, lines 43-45).

Referring to claim 75, McCann discloses cognitive load comprises degree to which working memory is engaged (column 2, lines 43-45).

Referring to claim 76, McCann discloses cognitive availability comprises the user's precognitive state is unavailable (column 2, lines 43-45).

Referring to claim 77, McCann discloses cognitive availability comprises the user has enough background awareness available to receive one or more types of feedback or status (column 2, lines 22-24).

Referring to claim 78, McCann, Theimer and Smyth discloses that the user is determined to have cognitive availability for information representing one type of feedback, presenting the selected predefined user interface comprises presenting one visual indicator in peripheral vision of the user (Smyth, column 4, lines 41-61\_).

Referring to claim 79, McCann, Theimer and Smyth disclose that the user is determined to have cognitive availability for information representing two types of feedback, presenting the selected predefined user interface comprises presenting one visual indicator in peripheral vision of the user and presenting an audible indicator (column 4, lines 41-61).

### ***Response to Arguments***

3. Applicant's arguments submitted on 9/2/09 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Responses to this action should be submitted as per the options cited below: The United States Patent and Trademark Office requires most patent related correspondence to be: a) faxed to the Central Fax number (571-273-8300) b) hand carried or delivered to the Customer Service Window (located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314), c) mailed to the mailing address set forth in 37 CFR 1.1 (e.g., P.O. Box 1450, Alexandria, VA 22313-1450), or d) transmitted to the Office using the Office's Electronic Filing System.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Namitha Pillai whose telephone number is (571) 272-4054. The examiner can normally be reached from 8:30 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, Kieu Vu can be reached on (571) 272-4057.

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All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Namitha Pillai  
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December 22, 2009

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